

Adjudication of Bear River Basin is Being Discussed

by Mark Steele

A meeting was held in Soda Springs in late September to discuss the possibility of adjudicating the Bear River Basin water rights, according to Marc Gibbs, Republican representative from District 32.

Rep. Gibbs said he and Rep. Tom Loertscher, Sen. John Tip-pets, Idaho Dept. of Water Resources Director Gary Spackman, and Randy Budge, an attorney who has represented Last Chance Canal and other water users in Southeast Idaho, gathered for a no host luncheon at a Soda Springs restaurant.

Gibbs said the meeting was held to discuss if there was a need to adjudicate water rights in the Bear River Basin.

Such adjudication--or legal determination by a state district judge --has recently been completed for the Snake River Basin in Idaho that covers almost all of the state. It cost some \$80 million and took years to complete the complicated task of recording and entering all legal water rights.

"We decided to go ahead and facilitate meetings to see if there is an interest in doing an adjudication," Gibbs said.

He noted there were some benefits in doing so to update water rights, but also some potential downfalls to some users who may have changed points of diversion or methods of irrigation.

Gibbs, who is a past president of Last Chance Canal Company, said the company had water rights that were adjudicated in 1920 and

had nothing to gain by such a court adjudication.

The Bear River was adjudicated by a federal court under Federal District Judge F.S. Dietrich in 1920. At that time, the court determined who and what water rights were valid and the water right dates, some of which were as early as the late 1800s.

Rep. Gibbs said any new adjudication would most likely be more of an impact on the water users of the tributaries of the Bear River in Idaho.

Under Idaho law, generally the first in time has first in rights, meaning the older the water right, the more senior it is and in water short years, they would get their water right first over junior water right holders.

A copy of an email sent by Budge to the Bear River Water Users Association, Inc. was shared by Gibbs with the Sun. Budge, who has done a great deal of water rights work as an attorney, summarized the meeting to the water users groups.

He noted the Dietrich Decree did not define the water rights with the level of the detail the IDWR now uses and many water rights have changed ownership, points of diversion, and places of use.

"Further, many complicated legal issues involving ground water rights, surface water rights, tribal rights, and Federal rights were resolved during the SRBA (Snake River adjudication), establishing precedent that should not need repeating in the Bear River Basin," he said in the email.

Budge noted a small northern Idaho adjudication was going smoothly and IDWR has the expertise and there is a water court in place to handle an adjudication of the Bear River Basin.

"The process could begin within the next two to three years, and would likely take 10 to 15 years to complete. It would require legislation to start and fund."

He went on to say that there appeared to be a general consensus that an adjudication would be a good thing in general for water users.

With the good that can come out of such action, Budge also noted there will be adverse consequences.

They include disagreements between water users that have generally been getting along well, filing fees to be paid, some water users will feel compelled to hire an attorney, and some water users may find their diversions more closely regulated by the IDWR than in the past.

Budge said the path forward will be a series of meetings scheduled in November in Malad, Preston, Montpelier, and Grace or Soda Springs.

"While we believe the benefits of an adjudication will outweigh the burdens, water right holders need to understand the process and be fully engaged to ensure their water rights are properly established and protected," he concluded.

Budge said he was invited by the director of the IDWR to attend the information gathering meeting.